

PART II - CODE OF ORDINANCES
Chapter 26 - ENVIRONMENT, LITTER, VANDALISM AND POLLUTION
ARTICLE V. - LITTERING; CLEANLINESS OF PREMISES; ABANDONED VEHICLES
DIVISION 2. - REMOVAL AND DISPOSITION OF ABANDONED VEHICLES, HAZARDOUS VEHICLES AND JUNKED
MOTOR VEHICLES

**DIVISION 2. - REMOVAL AND DISPOSITION OF ABANDONED VEHICLES, HAZARDOUS
VEHICLES AND JUNKED MOTOR VEHICLES ^[14]**

(14) **Charter reference—** Authority for the removal of abandoned or junked motor vehicles from private property, § 55.

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Sec. 26-145. - Administration.

The department of housing and community development shall be responsible for the administration and enforcement of this division. Nothing in this division shall be construed to limit the legal authority or the powers of officers of the city's police department and fire department in enforcing any laws or in carrying out their duties.

(Code 1982, § 10-109; Ord. No. 11625, § 2, 12-21-1998)

Sec. 26-146. - Definitions.

For the purpose of this division the following terms, phrases and words shall apply:

Abandoned motor vehicle means a motor vehicle that:

- (1) Is left on any public street or highway for longer than seven days;
- (2) Is left on property owned or operated by the city for longer than 24 hours; or
- (3) Is left on private property without the consent of the owner, occupant, or lessee thereof for longer than two hours.

City means the City of Durham, North Carolina, and the city's authorized agent.

Department means the housing and community development department.

Hazardous motor vehicle means a motor vehicle on private or public property that is declared to be a

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health or safety hazard by the housing code administrator when the vehicle is found to be:

- (1) A breeding ground or harbor for mosquitoes or other insects, snakes, rats, or other pests;
- (2) A point of weed growth and/or other vegetation over 12 inches in height; or
- (3) A point of collection for pools or ponds of water;
- (4) A point of concentration of gasoline, oil or other flammable or explosive materials; or
- (5) So located that there is a danger of the vehicle falling or turning over;
- (6) A place in which debris, bottles or other solid waste is discarded and is present within the vehicle;
- (7) A source of danger for children through entrapment in areas of confinement that cannot be opened from the inside or from exposed surfaces of metal, glass or other rigid materials; or
- (8) The creation of another similar condition or circumstance which exposes the general public to safety or health hazards.

Housing code administrator means the director of the housing and community development department and designees of the director.

Junked motor vehicle means a vehicle that does not display a current and valid license plate lawfully upon that vehicle and that:

- (1) Is partially dismantled or wrecked; or
- (2) Cannot be self-propelled or moved in the manner which it originally was intended to move; or
- (3) Is more than five years old and appears to be worth less than \$100.00.

Motor vehicle means all machines designed or intended to travel over land by self-propulsion or while attached to any self-propelled vehicle.

Owner means an individual, firm, partnership, association, corporation, governmental agency, or any combination thereof, holding and presenting the legal certificate of title to the particular motor vehicle.

(Code 1982, § 10-110; Ord. No. 11625, § 2, 12-21-1998)

Sec. 26-147. - Abandoned vehicle.

It shall be unlawful for any person to leave an abandoned motor vehicle:

- (1) On any public street or highway longer than seven days; or
- (2) On property owned or operated by the city for longer than 24 hours; or
- (3) On private property without the consent of the owner, occupant or lessee thereof for longer than two hours.

(Code 1982, § 10-111; Ord. No. 11625, § 2, 12-21-1998)

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Sec. 26-148. - Hazardous vehicle.

It shall be unlawful for the owner of a motor vehicle or for the owner, lessee or occupant of the real property upon which the motor vehicle is located to leave or allow to remain on the public or private property any hazardous motor vehicle.

(Code 1982, § 10-112; Ord. No. 11625, § 2, 12-21-1998)

Sec. 26-149. - Junked motor vehicles.

(a) *Purpose.* G.S. 160A-303.2 authorizes the city to regulate and to prohibit junked motor vehicles on public grounds and on private property. Pursuant to that authority, the city council finds that such regulation, restraint or prohibition is necessary and desirable to promote or enhance the:

- (1) Quality of urban attractiveness and the aesthetic appearance of the city;
- (2) Protection of property values throughout the city;
- (3) Preservation of the livability and the attractiveness of neighborhoods;
- (4) Promotion of tourism, conventions and other opportunities for economic development for the city;
- (5) Attractiveness of the city's thoroughfares and commercial roads which present the primary, public visibility to visitors and to passersby of the city; and
- (6) Promotion of the comfort, happiness and emotional stability of the occupants of property in the vicinity of junked motor vehicles.

(b) *Valid inspection decal as evidence of stationary character.* In determining whether a vehicle constitutes a junked motor vehicle, the housing code administrator, in applying the specific criteria in the definition of a junked motor vehicle shall take into consideration, but not be limited to, whether the vehicle has a valid inspection decal as evidence of the stationary character of the vehicle, whether the tires, wheels and other essential parts of the vehicle are present for the operation of the vehicle, flat tires, removed parts, the condition of the exterior or any other specific evidence that would support a finding that the vehicle violates this section. If such a determination is made, then the housing code administrator shall state that determination in writing.

(c) *Prohibited to leave or allow vehicle to remain on property.* It shall be unlawful for the registered owner or person entitled to the possession of a junked motor vehicle or for the owner, lessee, or occupant of the real property upon which a junked motor vehicle is located to leave or allow the vehicle to remain on the property after the vehicle has been ordered removed.

(d) *Required finding; order to remove.* Upon investigation, the housing code administrator may order the removal of a junked motor vehicle as defined in this division from private property after finding in writing that the aesthetic benefits of removing the vehicle outweigh the burdens imposed on the private property owner. Such finding shall be based on a balancing of the monetary loss of the apparent owner against the corresponding gain to the public by promoting or enhancing community, neighborhood or area appearance. The following, among other relevant factors, may be considered by the housing code administrator:

- (1) Protection of property values;

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- (2) Promotion of tourism and other economic development opportunity;
- (3) Indirect protection of public health and safety;
- (4) Preservation of the character and integrity of the community; and
- (5) Promotion of the comfort, happiness, and emotional stability of area residents.

(Code 1982, § 10-113; Ord. No. 11625, § 2, 12-21-1998)

Sec. 26-150. - Notice prior to removal; pre-tow notice.

(a) A motor vehicle to be removed because it has been abandoned, or declared to be hazardous or junked shall be towed only after notice to the registered owner or person entitled to possession of the vehicle. In such instances, the housing code administrator shall give written notice to the registered owner of such vehicle at the last known address on file with the Division of Motor Vehicles at least seven days prior to towing. Such notice shall contain:

- (1) A description of vehicle;
- (2) The location of vehicle;
- (3) The violation alleged;
- (4) The procedure the owner can follow to request a pre-tow hearing;
- (5) The date the vehicle will be towed; and
- (6) Notice that the vehicle is subject to a lien if towed. Service of notice is complete by depositing the notice in first class mail addressed to the registered owner or person entitled to possession of the vehicle.

(b) If the motor vehicle does not have a license plate or other identification such that the housing code administrator can ascertain ownership, then the administrator shall provide notice by posting a warning notice on the vehicle by affixing it to the windshield or some other conspicuous place on the vehicle. The notice shall contain the date the vehicle will be towed and a telephone number to request a pre-tow hearing. The notice shall also state that the vehicle will be removed by the city on a specified date, no sooner than seven days after the notice is affixed to the vehicle, unless the vehicle is brought into compliance by the owner or legal possessor prior to that time.

(c) The owner or legal possessor may request a hearing within seven days after the notice is mailed or affixed to the vehicle. The request for a hearing shall be in writing and received by the housing code administrator within seven days of the date notice is affixed to the vehicle or mailed to the owner.

(d) The requirement that notice be affixed to an abandoned, hazardous or junked vehicle at least seven days prior to removal may be omitted in those circumstances where there is a special need for prompt action to eliminate traffic obstructions or to otherwise maintain and protect the public safety and welfare. Such findings shall in all cases be entered by the authorizing officer in the appropriate daily records.

(Code 1982, § 10-114; Ord. No. 11625, § 2, 12-21-1998)

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Sec. 26-151. - Post-tow notice and hearing requirements.

(a) Whenever a motor vehicle is removed pursuant to this division, the city shall give post-tow notice as required by G.S. 20-219.11(a) and (b).

(b) The owner or any other person entitled to claim possession of the vehicle towed pursuant to this division may request in writing a hearing to determine if probable cause existed for the towing within 21 days of mailing or posting of the post-tow notice pursuant to G.S. 20-219.11(a) and (b). Service of notice by mailing is complete by depositing the notice in first class mail addressed to the owner or other person entitled to possession of the vehicle.

(c) The request shall be filed with the housing code administrator, who shall set the hearing within 72 hours of receiving the request. The owner and the person who requested the hearing, if someone other than the owner, shall be notified of the time and place of the hearing.

(d) The owner and any other interested parties may present evidence at the hearing.

(e) The only issue at the hearing is whether or not probable cause existed for the towing. If the housing code administrator finds that probable cause did exist, the lien continues. If the housing code administrator finds that probable cause did not exist, the lien is extinguished.

(f) Any aggrieved party may appeal the housing code administrator's decision to district court by filing appropriate judicial pleadings.

(g) At any stage in the proceedings, including before the probable cause hearing, the owner or other person entitled to possession may obtain possession of the vehicle by:

- (1) Paying the towing fee and costs incident to such fee; or
- (2) Posting a bond for double the amount of the towing fee.

(Code 1982, § 10-115; Ord. No. 11625, § 2, 12-21-1998)

Sec. 26-152. - Disposition of removed vehicles.

(a) *Authority to remove or enter into a contract.* The department shall have the authority to remove or enter into a contract to have removed to a storage garage or area any abandoned motor vehicles, junked motor vehicles and hazardous motor vehicles, after notice in compliance with section 26-150

(b) *Redemption.* Any abandoned or junked motor vehicle removed may be reclaimed by paying to the city all reasonable costs incidental to the removal and storage of the vehicle. Whenever the tow of such vehicle is contested, the vehicle may be released pending a hearing upon the posting of a bond. Any such vehicle ordered to be released as a result of a post-tow hearing may be reclaimed consistent with the terms of such order.

(c) *Sale or destruction.* When any junked motor vehicle, abandoned motor vehicle, or hazardous motor vehicle is removed, the department shall provide in its notice the information required by G.S. 20-114(c), 44A-4(c) and 44A-4(f). The housing code administrator is authorized to dispose of any vehicle removed by public or private sale 30 days after the maturity of the obligation to pay reasonable costs incidental to removal and storage if such vehicle has not been redeemed or the removal of such vehicle has not been contested. Any such sale shall be conducted by a sales procedure in accordance with G.S. 44A-4, 44A-5, and 44A-6, except that no hearing in addition to the probable cause hearing is

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required. If no one purchases the vehicle at the sale and if the value of the vehicle is less than the amount of the costs, the city may destroy the vehicle.

(d) *Indemnity.* A person requesting the city to remove a junked motor vehicle or abandoned motor vehicle or hazardous motor vehicle from private property shall indemnify the city against any loss, expense or liability incurred because of the removal, storage or sale thereof.

(e) *Authority to authorize the disposition of a motor vehicle.* The department shall have the authority to authorize the disposition of a motor vehicle immediately if the owner of the vehicle signs a consent form authorizing the city to sell or to dispose of the vehicle immediately without complying with any statutory requirements pertaining to the disposition of such vehicles.

(Code 1982, § 10-116; Ord. No. 11625, § 2, 12-21-1998)

Sec. 26-153. - Protection against criminal or civil liability.

No person shall be held to answer to any civil or criminal action to any owner or other person legally entitled to the possession of any abandoned motor vehicle, junked motor vehicle or hazardous motor vehicle, for disposing of such vehicle as provided in this division.

(Code 1982, § 10-117; Ord. No. 11625, § 2, 12-21-1998)

Sec. 26-154. - Applicability of division.

This division shall not apply to:

(1) Any motor vehicle in an enclosed building or any motor vehicle on the premises of a business enterprise being operated in a lawful place and manner if the vehicle is necessary to the operation of the enterprise, or to any vehicle in an appropriate storage place or depository maintained in a lawful place and manner by the city. A "lawful place and manner" shall include, but not be limited to, compliance with the city's UDO. A vehicle "is necessary to the operation of a business enterprise" if there is clear, active use or involvement of the vehicle in the operation of the business enterprise. Mere storage or idle standing of a vehicle does not constitute a vehicle "necessary to the operation of the enterprise."

(2) A motor vehicle kept or stored at a bona fide "automobile graveyard" or "junkyard," as defined in G.S. 136-143.

(Code 1982, § 10-118; Ord. No. 11625, § 2, 12-21-1998)

Sec. 26-155. - Administrative search and inspection warrant.

The housing and community development department is authorized to secure an administrative search and inspection warrant, as provided by G.S. 15-27.2, in order to conduct any necessary inspection of the premises on which an abandoned motor vehicle, junked motor vehicle, or hazardous motor vehicle may be located and to obtain evidence to determine whether there is any violation of any provisions of this division.

(Code 1982, § 10-119; Ord. No. 11625, § 2, 12-21-1998)

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Secs. 26-156—26-178. - Reserved.

⁽¹⁴⁾ **State Law reference—** Authority, G.S. 160A-303; removal by the secretary of state department of transportation, G.S. 20-137.6 et seq. (Back)